

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 17)
of the Cable Television Consumer)
Protection and Competition Act)
of 1992)
)
Compatibility Between Cable)
Systems and Consumer)
Electronics Equipment)

ET Docket No. 93-7

COMMENTS OF MEDIA GENERAL CABLE OF FAIRFAX COUNTY, INC.

Media General Cable of Fairfax County, Inc. ("Media General") submits these comments in response to the Notice of Proposed Rulemaking, FCC 93-495 (Dec. 1, 1993) ("NPRM") issued by the Commission in this proceeding. Media General's interest in this proceeding, and these comments, focus on just two of the issues raised in the NPRM. Media General strongly believes that the Commission's proposal that cable systems be obliged "... to provide subscribers with component descramblers at no separate charge..." (NPRM, slip op. at 15, paragraph 30) will impose unnecessary and onerous burdens on cable systems. The Commission's proposal will be unfair to system subscribers who do not own television receivers or VCRs equipped with a Decoder Interface, but nonetheless are obliged to subsidize the supply and installation of component descrambler/decoder units through their payments for program services. The proposal will also

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send the wrong economic signals to those who do buy new video reception gear with a Decoder Interface because they will enjoy the use of subsidized component descrambler/decoder units. None of the parties affected by the approach proposed in the NPRM will be truly benefitted.

Similarly, the Commission's requirement that cable systems publish to their subscribers a list of sources of compatible remote control units available in the local area is unproductively costly. So long as cable systems make known both to local area merchants and to their subscribers what commercially-available remote units are compatible with the system, conventional market clearing mechanisms will efficiently associate willing sellers with willing buyers.

A. The Costs of Component Descrambler/Decoder Units (and the Cost of Installation of Such Units) Should be Recovered Through a Separate Charge for that Equipment and its Installation.

The NPRM recognizes that the proposal to bundle component descrambler/decoder equipment and installation charges with program service charges is an abrupt departure from earlier Commission actions concerning the regulation of cable rates. NPRM, slip op. at 15 n.28. Indeed, it is a tenet of modern rate regulation that those responsible for regulating rates best serve the public interest by unbundling rates and the service elements with which they are associated as broadly as possible. This philosophy has been endorsed by the FCC with thorough rigor and zeal in the telephone industry and has

generally become the preferred philosophy of rate regulation. See, e.g., Amendment of Sections 64.702 (Third Computer Inquiry), 104 FCC 2d 958, 1064-66 (1986). There are very sound reasons for the extent to which unbundled rates are preferred by regulatory authorities. Chief among these is the increased likelihood that regulated rates will mimic market rates if the customers of the regulated industry can choose among a broader array of service elements to define the precise service that they wish to receive. This, in turn, represents the core precept of allocating specific costs to those consumers who are responsible for causing them.

The extent to which the Commission's proposal for component descrambler/decoders does violence to all of this is palpable. The component descrambler/decoder will serve as an alternative to the set-top units used by consumers who do not have receivers with Decoder Interface. Those "old technology" consumers pay a separate charge based on equipment basket cost for the hardware that they require for cable service and, as appropriate, for installation and reconfiguration of it. Were the Commission's proposal adopted, the next door neighbor of an "old technology" subscriber who used the component descrambler/decoder in conjunction with his Decoder Interface equipped receiving gear would not only receive misleading signals from the probable perception that the component descrambler/decoder unit is "free", effectively providing an

over-inducement to the purchase of receivers with Decoder Interface capability, but also impose on his next door neighbor (and all others with "old technology" video receivers) costs that those individuals had no role at all in causing. To the extent that the over-inducement to purchase Decoder Interface equipped receivers causes the premature obsolescence of set-top units, this additional cost will also have to be recovered from someone. As the Commission's current rules operate, that someone will probably be the same "old technology" subscribers who are also paying part of the cost of the new component descrambler/decoder. We understand the Commission's enthusiasm for inducing movement toward advanced technologies, but it is bitterly unfair to fuel modernization by imposing some of the costs of the new technology on those who reap none of its benefits.

Considerations of regulatory efficiency also favor treatment of component descrambler/decoders as elements of the equipment basket for which separate charges may be made to the subscribers using those units, and causing the costs of installing them, rather than as elements of program service costs. If the latter course is elected, it seems clear to us that these costs must be treated as "external" costs eligible for pass-through. It is certainly the case that the systems surveyed to create benchmark rates did not have among their costs these cost elements; these costs are entirely new. Thus,

it would be unfair, and irrational, to limit the recovery of these costs to benchmark levels. Equally, it would be inefficient to force all systems incurring such costs to resort to cost-of-service justifications of their rates. The process of passing through such costs would not be free from burden. We suspect that systems would be obliged to create a future test quarter to estimate component descrambler/decoder expenses (including installation expenses) to be incurred in that quarter and calculate the increases in program service rates necessary to defray those upcoming quarterly costs. This would be, until the system achieved mature component descrambler/decoder penetration, an on-going requirement, as the costs would continue to be incurred.

In contrast, because equipment basket costs are determined on a per-unit basis, the unit costs of equipment and installation could be established on a one-time basis, corrected only when there is a significant alteration in unit cost.

B. Cable Systems Need Not Provide Local Outlet Information to Encourage Customer Access to Consumer-Owned System Compatible Remote Units.

The Commission has proposed that cable operators that offer remote control capacity with their set-top devices be required to include in their consumer education program a written notice informing subscribers not only "the models of remote control units that are compatible with the set-top

devices they employ," but also "a list of sources of where these models can be obtained in the local area."^{1/} NPRM, slip op. at 8, paragraph 16. Moreover, this list would be required to be "current as of no more than 60 days before the yearly mailing of consumer information." Id. The rationale for this requirement is to "promote the availability of a wider selection of remote controls in the local area." Id. The Commission suggests that, in order to compile such a list, cable operators should be compelled to conduct periodic surveys of local retailers to determine the availability of compatible remote control units.

While the Commission contends that "none of these proposals would appear to impose significant burdens" on cable operators, id., slip op. at 9, paragraph 17, Media General suggests that a burden not offset by attendant benefits would be imposed by requiring cable operators to provide source information for remote control units. As the NPRM implicitly concedes, a comprehensive list of local retailers offering compatible remote control units would be in constant flux and, therefore, would require considerable effort to update periodically. In addition, as a practical matter, it is inevitable that sooner or later a local retailer will be

^{1/} The "local area" needs to be defined if any such regulatory obligation is imposed. Although we concede that it is somewhat artificial, the only clear definition that occurs to us is the geographical boundaries of the franchise area.

mistakenly left off such a list, thereby putting the cable operator in the position of inadvertently interfering in the marketplace and exposing it to assertions of liability for interfering with the prospective business advantage of the disappointed retailer. It is also conceivable that consumers disappointed in the products supplied to them by merchants to whom they were guided by a cable system listing could seek to make claims against the system. If the Commission imposes any obligation on cable systems that publicize retail outlets for system-compatible electronic equipment, it must make clear that that undertaking may not serve as the basis for any liability to the cable system.

Local retailers can very adequately compete in the marketplace as they do now, by advertising their own products as they see fit. The NPRM provides no basis for the tacit conclusion that retailers are somehow unable to communicate the availability of remote control devices to consumers. Likewise, there is no reason to think that consumers will not be able to find system-compatible remotes if they enter the market looking for them.

Of course, to make all of this work, both sellers and potential buyers of remotes must know what gear is compatible with the set-top unit in use. Media General has absolutely no objection to providing this information by publishing it to its subscribers and providing it on request to potential sellers.

Remote control units are already a common and widely available consumer item; there is no reason to believe that the public needs any special help from the cable operators in order to find them. Indeed, the publication of an incomplete list would merely increase consumer confusion regarding the source of such devices. For all these reasons, Media General opposes requiring cable operators to provide a list of sources from which remote control units can be purchased.

However, if the Commission insists that such a list needs to be provided, it should establish rules which enable cable operators to carry out their responsibilities without exposing them to potential litigation for the failure to publish a comprehensive list. Specifically, the cable operator should be required only to publish a notice in local newspapers, informing retailers that the operator is collecting information on who is selling particularly identified remote control units. It should be the responsibility of local retailers to respond to this notice if they desire to be included in the list sent to subscribers. The cable operator would compile the information thus received, without any further responsibility for verification. This is the information which would then be provided to consumers on an annual basis.

Conclusion

Both the Commission's proposal to "bundle" (and, consequently, to subsidize) the cost of component decoder/descrambler units and its inclination to interject cable systems between sellers and potential buyers of system-compatible remote units are contrary to economic theory and sound regulatory practice. Neither should be adopted.

Respectfully submitted,



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